**IN THE HIGH COURT OF PANJAB AND HARYANA AT CHANDIGARH**

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Case No. **RSA No. 152 of 1987**

Date of decision _____

Jai Singh ... Appellant

Versus

Ajaib Singh and others ... Respondents

Present: Mr. U.S.Sahni, Advocate
with Mr.Parveen Moudgil,Advocate
for the appellant.

Mr. H.S.Gill, Sr. Advocate
with Mr. Mandeep K.Sajan, Advocate
for respondent no.4.

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**RANJIT SINGH, J**

Ajaib Singh son of Budh Singh had filed a suit for declaration claiming ownership and consequential relief of possession of land measuring 38 Kanals 8 Marlas described in the head note of the plaint. The suit was filed on the basis of a Will dated 3.3.1976 alleged to have been executed in favour of the respondent-plaintiff by one Gurbax Singh. It was claimed that by virtue of this Will, the plaintiff-respondent had become sole owner of the property . Gurbax Singh was uncle of respondent-plaintiff. The pedegree table would show that one Dara Singh had four sons and a daughter, named Jai Singh, Gurbax Singh, Bachan Singh, Budh Singh and Sham Kaur respectively. Bachan Singh died on 3.8.1971 and his property devolved on his legal heirs. Sham Kaur died on 29.11.1976 and her property went to Budh Singh, Jai Singh and Gurbax Singh in equal shares. Gurbax Singh died in November, 1982. It is claimed that Gurbax Singh had

adopted respondent-plaintiff, Ajaib Singh who is son of Budh Singh and he had been looking after said Gurbax Singh and serving him as his father. Pleased with the services so rendered by the respondent-plaintiff, deceased Gurbax Singh had executed a valid Will dated 3.3.1976 in his favour and, as such, he had become the sole owner of the property left by Gurbax Singh. When the respondent-plaintiff asked the defendants to deliver the possession of the land, they refused and hence he filed the suit. One Sampuran Singh and Beeja Singh had been joined as defendants because part of land had been in possession of said Sampuran Singh as mortgagee whereas Beeja Singh was in possession of land as a tenant.

In response to the notice issued, only Jai Singh appeared and filed written statement. He raised preliminary objection to the effect that Gurbax Singh deceased had no right to execute a valid Will as the property was co-parcenary and ancestral property. It was also pleaded that the suit was not maintainable in the form it was filed and was bad for non-joinder of necessary parties. It was also urged that some land was lying under mortgage and the respondent-plaintiff had not filed any suit for redemption of the same besides raising various other objections. On merits, it was admitted that the relationship as mentioned in the suit was correct. Death of Sham Kaur and mutation of her property thereafter was also admitted. The factum of death of Gurbax Singh had also been admitted. However, it was denied if the respondent-plaintiff had been adopted by deceased Gurbax Singh. It was further averred that the respondent-plaintiff had always described himself as son of Budh Singh and had not described himself as the son or adopted son of Gurbax Singh in any of the documents. The Will dated 3.3.1976 stated to have been executed by Gurbax Singh in favour of the respondent-plaintiff was also denied and it was described as a forged and fictitious document. It was also pointed out that this Will had been doubted by the Assistant Collector vide his order dated 25.8.1983 whereby the same had been declared as forged and fictitious document. The defendants other than Jai Singh did not put in appearance

and were, accordingly, proceeded ex parte. Having regard to the pleadings, the following issues were framed :-

1. Whether deceased Gurbax Singh executed a valid Will dated 3.3.1976 in favour of the plaintiff ? OPP

2. Whether the suit is not maintainable in the present form ? OPD

3. Whether the suit is bad for non-joinder of necessary parties ? OPD

4. Whether the suit is not maintainable in view of objection No.4 of the written statement ? OPD

5. Whether the suit is bad for multifariousness ? OPD

6. Whether the property in dispute is joint Hindu Family and coparcenery property and whether deceased Gurbax Singh had no authority to make a Will regarding the property in dispute ?OPD

7. Whether the suit is properly valued for the purposes of court fee and jurisdiction ? OPP

8. Relief.

Having regard to the evidence led by respective parties and on analysis thereof,the trial Court came to the conclusion that deceased Gurbax Singh had executed a valid Will in favour of the respondent-plaintiff. Issues no. 2 to 6 were also decided against the appellant-defendant whereas Issue No.7 was decided in favour of the plaintiff. The suit was, accordingly, decreed. The same was taken appeal. There Beeja Singh (defendant no.4) filed cross-objections. The first Appellate Court did not find any merit in the appeal and, accordingly, dismissed the same with costs. Cross-objections filed by Beeja Singh were also dismissed. This is how Jai Singh, appellant-defendant is in second appeal before this Court.

At the time of admission of this appeal, no substantial question of law had been formulated. When the appeal came up for hearing, it was noticed that the appellant had not formulated any substantial question of law on which this

appeal could be heard but on his request the case was adjourned for seeing if any substantial question of law would arise in the present appeal or not. It is in this background that counsel for the appellant has submitted that two substantial questions of law may arise in the present appeal and these, as per him, are as follows :-

(1) Where the formal basis and the nature of the will as per recital is the adoption of the plaintiff by the testator and no adoption has been proved, the very foundation of the alleged will is non-existent, rendering its execution as improbable and untenable.

(2) Where the plaintiff himself admits in cross-examination that the suit land situated in village Shergarh was ancestral in the hands of Gurbax Singh, the lower Appellate Court could brush aside this important admission on the ground that the ancestral nature of the land had not been proved by documentary evidence.

The substantial questions of law, as formulated above, in fact mean that the appellant is challenging the validity of the Will and has mainly urged that where the part of recital contained in the Will is not proved, then the Will should also fail. Similarly, the second question of law in effect would mean that the admitted facts need not be proved.

While making his submission, learned counsel for the appellant would submit that no evidence was led on behalf of the respondent-plaintiff to prove the adoption as was mentioned in the recital of the Will. Once this aspect of the averment in the Will had not been established, the whole Will must fail. Learned counsel could not substantiate his argument from the facts on record. The evidence led in this case would clearly reveal that the document, Exhibit P-1 was produced on record and relied upon as a Will of Gurbax Singh and not as adoption deed. This Will had been duly established by the evidence of respondent-plaintiff

as well as the scribe Milkh Raj, PW-2. Waryam Singh, PW-3, who was one of the attesting witness, was also produced as a witness in support of the execution of this Will. This was a registered Will and, as such, gave an indication of the fact that the same had been willingly executed by Late Gurbax Singh. In this view of the matter, it could not be said that this document was adoption deed or adoption was also required to be proved before this Will was relied upon. If the inheritance was being claimed on the basis of Will, the respondent-plaintiff was required to prove this Will to the satisfaction of the judicial conscious of the Court and was under no obligation or burden to show that he had been adopted as a son. The property could be disposed in favour of the respondent-plaintiff even if he had not been adopted as a son. A perusal of Exhibit P/1 would also show that the factum of adoption and the respondent-plaintiff rendering his service to Late Gurbax Singh is referred and mentioned in the passing to justify the execution of the Will and definitely was not executed as adoption deed. Even if it is to be assumed for the sake of argument that this was a deed of adoption, then also this document could have been proved as a Will without proving the valid adoption. It can be noticed that adoption deed can be treated as a testamentary disposition in favour of a person even where his adoption is held illegal or invalid. In such a case, what is required to be seen is if a particular document would reveal or show a testamentary disposition or not. As already noticed, this document had been produced as a Will and the question of seeing if it was adoption deed did not arise. There was no requirement, in my view, to prove it to be adoption for proving the Will to be a valid and duly executed document. In **Krishna Rao** versus **Sundara Siva Rao and others**, AIR 1931 Privy Council 109, it has been held that a document could be treated as having a testamentary effect though it was being relied upon as adoption deed which could not be proved or established. It is, thus, clear that where a deed of adoption is held invalid or it cannot be read as adoption deed, still it can act as testamentary disposition. Basically, it depends upon the wording

contained in the document. In this regard, judgments of this Court in **Ranjit Singh** versus **Garja Singh,** 1967 CLJ (Punjab and Haryana) 628 and **Ishar Singh** versus **Surat Singh,** (1923-4) Lahore 356 can also be referred. In all these cases, what is required to be seen is the language of the document and the surrounding circumstances. If it is noticed that the reason or motive of the document was to gift or bequeath, then it can be treated as a valid testamentary disposition. In this view of the matter, the submission of learned counsel for the appellant that the Will cannot be validly relied upon in the absence of proof of adoption as was recited in the Will itself, is devoid of merit and is, accordingly, rejected.

The second submission made on behalf of the appellant that admitted facts need not be established, would also not advance his case any further. Counsel for the appellant apparently is basing his entire submission after picking up a line from the cross-examination of PW-1 wherein he had stated that the land located in Village Shergarh was ancestral. It is required to be noticed that the burden to prove that the land was ancestral was on the appellant-defendant as he had asserted the same. The land in dispute was located in two villages, namely Shergarh and Bhalerian. The respondent-plaintiff had never admitted if the land in village Bhalerian was ancestral. The trial Court had noticed that the appellant-defendant had produced no record or evidence to show that the land in dispute was ancestral property. In this background, it was found by the trial Court that there was no evidence showing Gurbax Singh to be joint with other members of the family or that the property was Joint Hindu Family property or coparcenary property. Rather, it was revealed from the evidence that Gurbax Singh was living alone in Rajasthan and he had even died in Rajasthan. It was, accordingly, noticed that even if it was shown that Gurbax Singh had inherited his property from his father, it would not go to show that the property was Joint Hindu Family Property or coparcenary property, as admittedly, Gurbax Singh had been living separately. The casual admission that a part of land was ancestral would not , in my opinion, change the

factual position. In any case, this partial admission on the part of PW-1 would not show that the entire land was ancestral. Even it would not show that the part of land was ancestral as this fact could not be established by any cogent or reliable evidence by the appellant-defendant. In my view, this would also not give rise to any substantial question of law.

In view of the above discussion, the present appeal fails and is, accordingly, dismissed.

**( RANJIT SINGH )**
**JUDGE**

September____, 2006.

RS